

GENE VAN MATRE

IBLA 71-32

Decided June 22, 1972

Appeal from the Wyoming land office, Bureau of Land Management, decision (W 12667) rejecting public sale preference right bid and awarding land to high bidder.

Affirmed.

Public Sales: Preference Rights

A preference right to purchase land offered at public sale is lost when the claimant fails to submit the publication costs within the time required by the regulations and notice of high bidder, where even though the claimant was the applicant for the sale and had made a deposit for publication costs the deposit was not sufficient to cover the actual costs, and the preference right applicant failed, after notice of the costs, to remit the balance.

APPEARANCES: Gene Van Matre, appellant, pro se; Raymond F. Hogan, appellee, pro se.

OPINION BY MRS. THOMPSON

The August 12, 1970, decision by the Wyoming land office, from which Gene Van Matre has appealed, rejected his preference right bid for a 40.61 acre lot offered at public sale as a rough and mountainous tract pursuant to his application under the Public Sale Act, 43 U.S.C. § 1171 (1970). The land was awarded to Raymond F. Hogan as the only qualified bidder for the parcel.

The primary reason for the land office's rejection of Mr. Van Matre's preference bid was because he failed to submit \$19.93 to complete his payment for the publication costs of the sale. As a contiguous owner and applicant for the sale he had submitted as required, a \$50 deposit for publication costs with his application. The actual publication costs were \$69.93. This amount was indicated on the notice of the high bid declaring Hogan the high bidder. The notice stated that the owners of contiguous lands have a preference right for a period of 30 days from the sale date to purchase the land at the highest bid price, or at three times the appraised price if three times such appraised price

is less than the highest bid price, "plus \$69.93 to defray the cost of publication." Van Matre submitted the amount of the high bid price and asserted his preference right within the time required, but failed to submit the \$19.93.

In his appeal, Van Matre has tendered the \$19.93. He indicates his failure to submit the balance of the publication fee timely was due to inadvertence and reliance upon advice of his attorney. He contends that the instructions, directives and information received by him did not indicate that the publication fee deposit of \$50 would not cover the publication cost, and he requests reversal of the land office decision.

Hogan has answered pointing out, inter alia, that the notice of the high bid clearly showed the actual costs of publication.

The land office decision is correct. The notice of the high bid gave adequate notice of the amount of the publication costs and appellant should have understood that his deposit was insufficient to cover the total cost. The regulations in effect at the time of the sale provided that the failure of a preference-right applicant to submit an amount equal to the high bid offer plus the cost of publication "will cause the preference right to be lost as to that particular public sale." 43 CFR 2243.1-4(b) (1970), (now 43 CFR 2711.4(b) (1972)). Regulation 43 CFR 2243.1-3(c) (1970), (now 43 CFR 2711.3(c) (1972)), pertaining to the bidding specifically refers to the payment of the amount of the bids "plus the cost of publication \* \* \* , less any amount previously deposited toward publication costs. \* \* \* " There is nothing in the regulations or in the notice of the high bidder which would in any way suggest that the original deposit for the publication costs would be sufficient to support a preference right bid where the costs of publication are greater than the deposit. Indeed, as can be seen above, the opposite is true. The notice and the regulations clearly set forth the requirement for the payment of the full publication costs in order to qualify for the preference right.

The appellant's excuse for noncompliance is not a reason warranting a different legal conclusion from that reached by the land office.

In a comparable situation, a preference-right claimant allegedly failed to understand a form sent to him by the Bureau and, therefore, erroneously inserted a wrong date of his ownership. Since he did not assert ownership as of the time required, his preference right bid was rejected. His excuse was not a reason to obviate his failure to comply with the clear requirements of the regulations. Martin H. Shuler,

Walter Y. Wentz, 67 I.D. 261 (1960). Likewise, a preference claimant who made inquiry of the land office within the preference right time but failed to submit his purchase money within that time did not establish his preference right. Elias W. Leigh, A-28681 (September 12, 1961). Leigh emphasizes that the claimant has the obligation to ascertain and meet the requirements in order to have a valid preference right.

Also, where the regulations formerly required payment of the costs of publication directly to the applicant within ten days after a preference right claimant was declared the purchaser, and the claimant failed to do so, the claimant's bid was properly rejected and the land awarded to another. John N. Pomeroy, A-28134 (January 13, 1960).

Although the above cases involve different factual circumstances from that presented here, they all establish the basic principle that there must be timely compliance with the regulatory requirements in order to establish a preference right to purchase.

Even though the preference right applicant here has tendered the deficiency with his appeal this is too late to satisfy the requirements. In Pomeroy, *supra*, payment of the costs of publication was also made after the time required, but this could not be accepted where, as here, rights of another party are involved. As stated in Pomeroy, concerning the preference right:

This preference right is not a statutory grant of the land in any sense. It is at most an opportunity given to contiguous owners for a period of not less than 30 days to buy the land for the amount of the highest bid. It is an option to buy and like any form of option, the preference can be lost if the optionee fails to meet the conditions imposed on the exercise of the option. Thus, the Department has frequently held that where a preference-right claimant fails to file proper proof of ownership of adjoining lands within the 30-day period required by the regulations, the preference right is lost. Fred and Mildred M. Bohen et al., 63 I.D. 65 (1956); Mildred S. Ayers, A-27604 (August 28 [26], 1958). Also, where the preference-right claimant fails to accompany his claim with the purchase price of the land within the 30-day period after the highest bid has been received, he loses his right to assert his preference. Sam Henry Bober and Sons, Inc., A-27141 (June 21, 1955).

For the reasons given above, Van Matre's preference right bid was properly rejected and the land was properly awarded to Hogan.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision is affirmed and the case is remanded to the Bureau for further appropriate action.

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Joan B. Thompson, Member

We concur:

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Douglas E. Henriques, Member

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Edward W. Stuebing, Member

